

**CHILD AND FAMILY SERVICES AND
RELATED JUDICIAL CODE AMENDMENTS**

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: LaVar Christensen

LONG TITLE

General Description:

This bill amends child welfare provisions in Child and Family Services and the Judicial Code.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ exempts health care decisions of a mature minor from the definition of neglect;
- ▶ requires the legislative auditor general to complete an audit of child welfare cases to measure compliance by attorney guardians ad litem with their statutory duties;
- ▶ requires the Child Welfare Legislative Oversight Panel to study and make recommendations on specified child abuse, neglect, and dependency issues;
- ▶ requires the juvenile court to recognize the rights of parents and children and the limits placed on the Division of Child and Family Services;
- ▶ clarifies how a petition before a juvenile court may be dismissed at any stage of the court proceedings;
- ▶ makes amendments regarding appointment of a guardian ad litem;
- ▶ modifies reunification services provisions;
- ▶ requires the court to advise an attorney guardian ad litem of the attorney guardian ad litem's duties;
- ▶ requires an attorney guardian ad litem to timely communicate with the parents or guardian of a minor;
- ▶ prohibits an attorney guardian ad litem from making public statements about a child

abuse, neglect, or dependency case; and

- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2004.

Utah Code Sections Affected:

AMENDS:

62A-4a-101, as last amended by Chapters 281 and 283, Laws of Utah 2002

62A-4a-118, as last amended by Chapters 94 and 232, Laws of Utah 2003

62A-4a-207, as last amended by Chapter 93, Laws of Utah 2003

78-3a-102, as last amended by Chapter 329, Laws of Utah 1997

78-3a-103 (Effective 07/01/04), as last amended by Chapter 171, Laws of Utah 2003

78-3a-109, as last amended by Chapter 180, Laws of Utah 2001

78-3a-112, as renumbered and amended by Chapter 365, Laws of Utah 1997

78-3a-311, as last amended by Chapter 246, Laws of Utah 2002

78-3a-912, as last amended by Chapter 168, Laws of Utah 2002

78-7-45, as last amended by Chapter 168, Laws of Utah 2002

ENACTS:

78-3a-103.5, Utah Code Annotated 1953

REPEALS:

78-3a-305.1, as enacted by Chapter 274, Laws of Utah 1998

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **62A-4a-101** is amended to read:

62A-4a-101. Definitions.

As used in this chapter:

- (1) "Abuse" means:

- (a) actual or threatened nonaccidental physical or mental harm;
- (b) negligent treatment;
- (c) sexual exploitation; or
- (d) any sexual abuse.

(2) "Adoption services" means placing children for adoption, subsidizing adoptions under Section 62A-4a-105, supervising adoption placements until the adoption is finalized by the court, conducting adoption studies, preparing adoption reports upon request of the court, and providing postadoptive placement services, upon request of a family, for the purpose of stabilizing a possible disruptive placement.

(3) "Board" means the Board of Child and Family Services established in accordance with Sections 62A-1-105, 62A-1-107, and 62A-4a-102.

(4) "Child" has the same meaning as "minor," as defined in this section.

(5) "Consumer" means a person who receives services offered by the division in accordance with this chapter.

(6) "Chronic physical abuse" means repeated or patterned physical abuse.

(7) "Chronic neglect" means a repeated or patterned failure or refusal by a parent, guardian, or custodian to provide necessary care for a minor's safety, morals, or well-being.

(8) "Chronic emotional abuse" means repeated or patterned emotional abuse.

(9) "Custody," with regard to the division, means the custody of a child in the division as of the date of disposition.

(10) "Day-care services" means care of a child for a portion of the day which is less than 24 hours, in [his] the child's own home by a responsible person, or outside of [his] the child's home in a day-care center, family group home, or family child care home.

(11) "Dependent child" or "dependency" means a child, or the condition of a child, who is homeless or without proper care through no fault of the child's parent, guardian, or custodian.

(12) "Director" means the director of the Division of Child and Family Services.

(13) "Division" means the Division of Child and Family Services.

(14) (a) "Domestic violence services" means temporary shelter, treatment, and related

services to persons who are victims of abuse and their dependent children and treatment services for domestic violence perpetrators.

(b) As used in this Subsection (14) "abuse" means the same as that term is defined in Section 30-6-1, and "domestic violence perpetrator" means a person who is alleged to have committed, has been convicted of, or has pled guilty to an act of domestic violence as defined in Subsection 77-36-1(2).

(15) "Homemaking service" means the care of individuals in their domiciles, and help given to individual caretaker relatives to achieve improved household and family management through the services of a trained homemaker.

(16) "Mature minor" means a person less than 18 years of age whom the court determines is of an age and maturity and who reasonably demonstrates the capacity to make reasonable health care decisions on the minor's own behalf.

~~[(16)]~~ (17) "Minor" means a person under 18 years of age. "Minor" may also include a person under 21 years of age for whom the division has been specifically ordered by the juvenile court to provide services.

~~[(17)]~~ (18) "Natural parent" means a minor's biological or adoptive parent, and includes a minor's noncustodial parent.

~~[(18)]~~ (19) (a) "Neglect" means:

(i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;

(ii) subjecting a child to mistreatment or abuse;

(iii) lack of proper parental care by reason of the fault or habits of the parent, guardian, or custodian;

(iv) failure or refusal of a parent, guardian, or custodian to provide proper or necessary subsistence, education, or medical care, including surgery or psychiatric services when required, or any other care necessary for ~~[his]~~ the health, safety, morals, or well-being of the parent's or guardian's child; or

(v) a child at risk of being neglected or abused because another child in the same home is

neglected or abused.

(b) The aspect of neglect relating to education, described in Subsection ~~[(18)]~~ (19)(a)(iv), means that, after receiving notice that a child has been frequently absent from school without good cause, or that the child has failed to cooperate with school authorities in a reasonable manner, a parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate education.

(c) A parent or guardian legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a child, is not guilty of neglect.

(d) A parent or guardian may not be found guilty of neglect for the medical decisions made by a mature minor.

~~[(19)]~~ (20) "Protective custody," with regard to the division, means the shelter of a child by the division from the time the child is removed from the child's home until the shelter hearing, or the child's return home, whichever occurs earlier.

~~[(20)]~~ (21) "Protective services" means expedited services that are provided:

- (a) in response to evidence of neglect, abuse, or dependency of a minor;
- (b) in an effort to substantiate evidence of neglect, abuse, or dependency;
- (c) to a cohabitant who is neglecting or abusing a child, in order to help the cohabitant develop recognition of the cohabitant's duty of care and of the causes of neglect or abuse, and to strengthen the cohabitant's ability to provide safe and acceptable care; and
- (d) in cases where the child's welfare is endangered:
 - (i) to bring the situation to the attention of the appropriate juvenile court and law enforcement agency;
 - (ii) to cause a protective order to be issued for the protection of the minor, when appropriate; and
 - (iii) to protect the child from the circumstances that endanger the child's welfare including, when appropriate, removal from the child's home, placement in substitute care, and petitioning the court for termination of parental rights.

~~[(21)]~~ (22) "Services to unwed parents" means social, educational, and medical services

arranged for or provided to unwed parents to help them plan for themselves and the unborn child.

~~[(22)]~~ (23) "Severe neglect" means neglect that causes or threatens to cause serious harm to a minor.

~~[(23)]~~ (24) "Shelter care" means the temporary care of minors in nonsecure facilities.

~~[(24)]~~ (25) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a territory or possession administered by the United States.

~~[(25)]~~ (26) "Severe emotional abuse" means emotional abuse that causes or threatens to cause serious harm to a minor.

~~[(26)]~~ (27) "Severe physical abuse" means physical abuse that causes or threatens to cause serious harm to a minor.

~~[(27)]~~ (28) "State plan" means the written description of the programs for children, youth, and family services administered by the division in accordance with federal law.

~~[(28)]~~ (29) "Status offense" means a violation of the law that would not be a violation but for the age of the offender.

~~[(29)]~~ (30) "Substantiated" or "substantiation" means a judicial finding based on a preponderance of the evidence that abuse or neglect occurred. Each allegation made or identified in a given case shall be considered separately in determining whether there should be a finding of substantiated.

~~[(30)]~~ (31) "Substitute care" means:

(a) the placement of a minor in a family home, group care facility, or other placement outside the minor's own home, either at the request of a parent or other responsible relative, or upon court order, when it is determined that continuation of care in the child's own home would be contrary to the child's welfare;

(b) services provided for a child awaiting placement; and

(c) the licensing and supervision of a substitute care facility.

~~[(31)]~~ (32) "Supported" means a finding by the division based on the evidence available at the completion of an investigation that there is a reasonable basis to conclude that abuse, neglect,

or dependency occurred. Each allegation made or identified during the course of the investigation shall be considered separately in determining whether there should be a finding of supported.

~~[(32)]~~ (33) "Temporary custody," with regard to the division, means the custody of a child in the division from the date of the shelter hearing until disposition.

~~[(33)]~~ (34) "Transportation services" means travel assistance given to an individual with escort service, if necessary, to and from community facilities and resources as part of a service plan.

~~[(34)]~~ (35) "Unsubstantiated" means a judicial finding that there is insufficient evidence to conclude that abuse or neglect occurred.

~~[(35)]~~ (36) "Unsupported" means a finding at the completion of an investigation that there is insufficient evidence to conclude that abuse, neglect, or dependency occurred. However, a finding of unsupported means also that the division worker did not conclude that the allegation was without merit.

~~[(36)]~~ (37) "Without merit" means a finding at the completion of an investigation by the division, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur, or that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

Section 2. Section **62A-4a-118** is amended to read:

62A-4a-118. Annual review of child welfare referrals and cases by executive director -- Accountability to the Legislature -- Review by legislative auditor general.

(1) The division shall use principles of quality management systems, including statistical measures of processes of service, and the routine reporting of performance data to employees.

(2) (a) In addition to development of quantifiable outcome measures and performance measures in accordance with Section 62A-4a-117, the executive director, or ~~his~~ the executive director's designee, shall annually review a randomly selected sample of child welfare referrals to and cases handled by the division. The purpose of that review shall be to assess whether the division is adequately protecting children and providing appropriate services to families, in accordance with the provisions of Title 62A, Chapter 4a, Child and Family Services, and Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings, and Part 4, Termination of

Parental Rights Act. The review shall focus directly on the outcome of cases to children and families, and not simply on procedural compliance with specified criteria.

(b) The executive director shall report, regarding [~~his~~] the review of those cases, to the Legislative Auditor General and the Child Welfare Legislative Oversight Panel.

(c) Information obtained as a result of the review shall be provided to caseworkers, supervisors, and division personnel involved in the respective cases, for purposes of education, training, and performance evaluation.

(3) The executive director's review and report to the Legislature shall include:

(a) the criteria used by the executive director, or [~~his~~] the executive director's designee, in making the evaluation;

(b) findings regarding whether state statutes, division policy, and legislative policy were followed in each sample case;

(c) findings regarding whether, in each sample case, referrals, removals, or cases were appropriately handled by the division and its employees, and whether children were adequately and appropriately protected and appropriate services provided to families, in accordance with the provisions of Title 62A, Chapter 4a, Child and Family Services, Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings, and Part 4, Termination of Parental Rights Act, and division policy;

(d) an assessment of the division's intake procedures and decisions, including an assessment of the appropriateness of decisions not to accept referrals; and

(e) an assessment of the appropriateness of the division's assignment of priority.

(4) (a) In addition to the review conducted by the executive director, beginning July 1, 2004, the Legislative Auditor General shall audit a sample of child welfare referrals to and cases handled by the division and report his findings to the Child Welfare Legislative Oversight Panel.

(b) An audit under Subsection (4)(a) shall be conducted at least once every three years, but may be conducted more frequently pursuant to Subsection (4)(d).

(c) With regard to the sample of referrals, removals, and cases, the Legislative Auditor General's report may include:

(i) findings regarding whether state statutes, division policy, and legislative policy were followed by the division and its employees;

(ii) a determination regarding whether referrals, removals, and cases were appropriately handled by the division and its employees, and whether children were adequately and appropriately protected and appropriate services provided for families, in accordance with the provisions of Title 62A, Chapter 4a, Child and Family Services, Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings, and Part 4, Termination of Parental Rights Act, and division policy;

(iii) an assessment of the division's intake procedures and decisions, including an assessment of the appropriateness of decisions not to accept referrals;

(iv) an assessment of the appropriateness of the division's assignment of priority;

(v) a determination regarding whether the department's review process is effecting beneficial change within the division and accomplishing the mission established by the Legislature and the department for that review process; and

(vi) findings regarding any other issues identified by the auditor or others under Subsection (4)(d).

(d) An audit under Subsection (4)(a) may be initiated by:

(i) the Audit Subcommittee of the Legislative Management Committee;

(ii) the Child Welfare Legislative Oversight Panel; or

(iii) the Legislative Auditor General, based on the results of the executive director's review under Subsection (2).

(e) (i) Prior to the 2005 Annual General Session of the Legislature, the legislative auditor general shall complete an audit of child welfare cases to measure compliance by attorney guardians ad litem with their statutory duties.

(ii) This audit shall be considered one of the periodic audits required by Subsection (4)(b).

Section 3. Section **62A-4a-207** is amended to read:

62A-4a-207. Child Welfare Legislative Oversight Panel -- Responsibilities.

(1) (a) There is created the Child Welfare Legislative Oversight Panel composed of the

following members:

(i) two members of the Senate, one from the majority party and one from the minority party, appointed by the president of the Senate; and

(ii) three members of the House of Representatives, two from the majority party and one from the minority party, appointed by the speaker of the House of Representatives.

(b) Members of the panel shall serve for two-year terms, or until their successors are appointed.

(c) A vacancy exists whenever a member ceases to be a member of the Legislature, or when a member resigns from the panel. Vacancies shall be filled by the appointing authority, and the replacement shall fill the unexpired term.

(2) The president of the Senate shall designate one of the senators appointed to the panel under Subsection (1) as the Senate chair of the panel. The speaker of the House of Representatives shall designate one of the representatives appointed to the panel under Subsection (1) as the House chair of the panel.

(3) The panel shall follow the interim committee rules established by the Legislature.

(4) The panel shall:

(a) examine and observe the process and execution of laws governing the child welfare system by the executive branch and the judicial branch;

(b) upon request, receive testimony from the public, the juvenile court, and from all state agencies involved with the child welfare system including, but not limited to, the division, other offices and agencies within the department, the attorney general's office, the Office of the Guardian Ad Litem Director, and school districts;

(c) before October 1, 2002, and before October 1 of each year thereafter receive reports from the division, the attorney general, and the judicial branch identifying the cases not in compliance with the time limits established in Section 78-3a-308, regarding pretrial and adjudication hearings, Section 78-3a-311, regarding dispositional hearings and reunification services, and Section 78-3a-312, regarding permanency hearings and petitions for termination, and the reasons for the noncompliance;

(d) receive recommendations from, and make recommendations to the governor, the Legislature, the attorney general, the division, the Office of the Guardian Ad Litem Director, the juvenile court, and the public;

(e) (i) receive reports from the executive branch and the judicial branch on budgetary issues impacting the child welfare system; and

(ii) recommend, as it considers advisable, budgetary proposals to the Health and Human Services Joint Appropriations Subcommittee, the Executive Offices and Criminal Justice Appropriations Subcommittee, and the Executive Appropriations Committee, which recommendation should be made before December 1 of each year;

(f) study and recommend proposed changes to laws governing the child welfare system;

(g) study actions the state can take to preserve, unify, and strengthen the child's family ties whenever possible in the child's best interest, including recognizing the constitutional rights and claims of parents whenever those family ties are severed or infringed;

(h) during the 2004 interim, study and make recommendations to the Legislature on:

(i) the feasibility of requiring the juvenile court, except in exigent circumstances, to adjudicate a petition alleging child abuse, neglect, or dependency prior to ordering a child into protective custody;

(ii) establishing a right to a jury trial in a juvenile court proceeding;

(A) to adjudicate a petition alleging child abuse, neglect, or dependency; or

(B) to terminate a parent's rights;

(iii) the adequacy of warrant provisions in protecting children balanced against preserving and strengthening family ties to the fullest possible extent under the law;

(iv) whether a presumption of parental fitness and competence in judicial proceedings should be made in determining whether a parent's rights should be terminated;

(v) except in clear and verifiable exigent circumstances, how to otherwise strengthen procedural due process safeguards, including notice and an opportunity to be heard, for the parents of children that come under the jurisdiction of the juvenile court for possible child abuse, neglect, or dependency;

(vi) how to strengthen defense counsel for parents of children taken into protective custody;

(vii) whether compliance with 42 U.S.C. Sec. 5106a, the federal Child Abuse Prevention and Treatment and Adoption Reform requirements which include the mandatory appointment of a guardian ad litem in child abuse, neglect, and dependency cases with the approximately \$250,000 in federal child abuse prevention and treatment grant monies for which the state annually qualifies provides a sufficient comparative benefit to the state in relation to its strong interest in preserving and strengthening family ties to the fullest extent possible under the law; and

(viii) whether the evidentiary standard for the reunification services presumption and proceedings to terminate a parent's rights should be changed from clear and convincing to beyond a reasonable doubt;

~~[(h)]~~ (i) perform such other duties related to the oversight of the child welfare system as the panel considers appropriate; and

~~[(i)]~~ (j) annually report its findings and recommendations to the president of the Senate, the speaker of the House of Representatives, the Health and Human Services Interim Committee, and the Judiciary Interim Committee.

(5) (a) The panel has authority to review and discuss individual cases.

(b) When an individual case is discussed, the panel's meeting may be closed pursuant to Title 52, Chapter 4, Open and Public Meetings.

(c) When discussing an individual case, the panel shall make reasonable efforts to identify and consider the concerns of all parties to the case.

(6) (a) (i) The panel has authority to make recommendations to the Legislature, the governor, the Board of Juvenile Court Judges, the division, and any other statutorily created entity related to the policies and procedures of the child welfare system.

(ii) The panel does not have authority to make recommendations to the court, the division, or any other public or private entity regarding the disposition of any individual case.

(b) The panel may hold public hearings, as it considers advisable, in various locations within the state in order to afford all interested persons an opportunity to appear and present their

views regarding the child welfare system in this state.

(7) (a) All records of the panel regarding individual cases shall be classified private, and may be disclosed only in accordance with federal law and the provisions of Title 63, Chapter 2, Government Records Access and Management Act.

(b) (i) The panel shall have access to all of the division's records, including those regarding individual cases.

(ii) In accordance with Title 63, Chapter 2, Government Records Access Management Act, all documents and information received by the panel shall maintain the same classification that was designated by the division.

(8) In order to accomplish its oversight functions, the panel has:

(a) all powers granted to legislative interim committees in Section 36-12-11; and

(b) legislative subpoena powers under Title 36, Chapter 14, Legislative Subpoena Powers.

(9) Members of the panel shall receive salary and expenses in accordance with Section 36-2-2.

(10) (a) The Office of Legislative Research and General Counsel shall provide staff support to the panel.

(b) The panel is authorized to employ additional professional assistance and other staff members as it considers necessary and appropriate.

Section 4. Section **78-3a-102** is amended to read:

78-3a-102. Establishment of juvenile court -- Organization and status of court --

Purpose.

(1) There is established for the state a juvenile court.

(2) The juvenile court is a court of record. It shall have a seal, and its judges, clerks, and referees have the power to administer oaths and affirmations.

(3) The juvenile court is of equal status with the district courts of the state.

(4) The juvenile court is established as a forum for the resolution of all matters properly brought before it, consistent with applicable constitutional and statutory requirements of due

process.

(5) The purpose of the court under this chapter is to:

(a) promote public safety and individual accountability by the imposition of appropriate sanctions on persons who have committed acts in violation of law;

(b) order appropriate measures to promote guidance and control, preferably in the minor's own home, as an aid in the prevention of future unlawful conduct and the development of responsible citizenship;

(c) where appropriate, order rehabilitation, reeducation, and treatment for persons who have committed acts bringing them within the court's jurisdiction;

(d) adjudicate matters that relate to minors who are beyond parental or adult control and to establish appropriate authority over these minors by means of placement and control orders;

(e) adjudicate matters that relate to abused, neglected, and dependent minors and to provide care and protection for these minors by placement, protection, and custody orders;

(f) remove a minor from parental custody only where the minor's safety or welfare, or the public safety, may not otherwise be adequately safeguarded; and

(g) consistent with the ends of justice, [~~strive to~~] act in the best interests of the [~~minor's~~] minor in all cases and [~~attempt to~~] preserve and strengthen family ties [~~where possible~~].

Section 5. Section **78-3a-103 (Effective 07/01/04)** is amended to read:

78-3a-103 (Effective 07/01/04). Definitions.

(1) As used in this chapter:

(a) "Abused child" includes a minor less than 18 years of age who:

(i) has suffered or been threatened with nonaccidental physical or mental harm, negligent treatment, or sexual exploitation; or

(ii) has been the victim of any sexual abuse.

(b) "Adjudication" means a finding by the court, incorporated in a decree, that the facts alleged in the petition have been proved.

(c) "Adult" means a person 18 years of age or over, except that persons 18 years or over under the continuing jurisdiction of the juvenile court pursuant to Section 78-3a-121 shall be

referred to as minors.

(d) "Board" means the Board of Juvenile Court Judges.

(e) "Child placement agency" means:

(i) a private agency licensed to receive minors for placement or adoption under this code;

or

(ii) a private agency receiving minors for placement or adoption in another state, which agency is licensed or approved where such license or approval is required by law.

(f) "Commit" means to transfer legal custody.

(g) "Court" means the juvenile court.

(h) "Dependent child" includes a minor who is homeless or without proper care through no fault of [his] the child's parent, guardian, or custodian.

(i) "Deprivation of custody" means transfer of legal custody by the court from a parent or the parents or a previous legal custodian to another person, agency, or institution.

(j) "Detention" means home detention and secure detention as defined in Section 62A-7-101 for the temporary care of minors who require secure custody in physically restricting facilities:

(i) pending court disposition or transfer to another jurisdiction; or

(ii) while under the continuing jurisdiction of the court.

(k) "Division" means the Division of Child and Family Services.

(l) "Formal referral" means a written report from a peace officer or other person informing the court that a minor is or appears to be within the court's jurisdiction and that a petition may be filed.

(m) "Group rehabilitation therapy" means psychological and social counseling of one or more persons in the group, depending upon the recommendation of the therapist.

(n) "Guardianship of the person" includes the authority to consent to marriage, to enlistment in the armed forces, to major medical, surgical, or psychiatric treatment, and to legal custody, if legal custody is not vested in another person, agency, or institution.

(o) "Habitual truant" is a school-age minor who has received more than two truancy

citations within one school year from the school in which the minor is or should be enrolled and eight absences without a legitimate or valid excuse or who, in defiance of efforts on the part of school authorities as required under Section 53A-11-103, refuses to regularly attend school or any scheduled period of the school day.

(p) "Legal custody" means a relationship embodying the following rights and duties:

- (i) the right to physical custody of the minor;
- (ii) the right and duty to protect, train, and discipline the minor;
- (iii) the duty to provide the minor with food, clothing, shelter, education, and ordinary medical care;

- (iv) the right to determine where and with whom the minor shall live; and

- (v) the right, in an emergency, to authorize surgery or other extraordinary care.

(q) "Mature minor" means a person less than 18 years of age whom the court determines is of an age and maturity and who reasonably demonstrates the capacity to make reasonable health care decisions on the minor's own behalf.

~~[(r)]~~ (r) "Minor" means a person under the age of 18 years. It includes the term "child" as used in other parts of this chapter.

~~[(s)]~~ (s) "Natural parent" means a minor's biological or adoptive parent, and includes the minor's noncustodial parent.

~~[(t)]~~ (t) (i) "Neglected child" means a minor:

(A) whose parent, guardian, or custodian has abandoned the minor, except as provided in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;

(B) whose parent, guardian, or custodian has subjected the minor to mistreatment or abuse;

(C) who lacks proper parental care by reason of the fault or habits of the parent, guardian, or custodian;

(D) whose parent, guardian, or custodian fails or refuses to provide proper or necessary subsistence, education, or medical care, including surgery or psychiatric services when required, or any other care necessary for health, safety, morals, or well-being; or

(E) who is at risk of being a neglected or abused child as defined in this chapter because another minor in the same home is a neglected or abused child as defined in this chapter.

(ii) The aspect of neglect related to education, described in Subsection (1)~~[(s)]~~(i)(D), means that, after receiving notice that a minor has been frequently absent from school without good cause, or that the minor has failed to cooperate with school authorities in a reasonable manner, a parent or guardian fails to make a good faith effort to ensure that the minor receives an appropriate education.

(iii) A parent or guardian legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a minor, is not guilty of neglect.

(iv) A parent or guardian may not be found guilty of neglect for the medical decisions made by a mature minor.

~~[(t)]~~ (u) "Nonjudicial adjustment" means closure of the case by the assigned probation officer without judicial determination upon the consent in writing of the minor, the parent, legal guardian or custodian, and the assigned probation officer.

~~[(w)]~~ (v) "Probation" means a legal status created by court order following an adjudication on the ground of a violation of law or under Section 78-3a-104, whereby the minor is permitted to remain in ~~[his]~~ the minor's home under prescribed conditions and under supervision by the probation department or other agency designated by the court, subject to return to the court for violation of any of the conditions prescribed.

~~[(v)]~~ (w) "Protective supervision" means a legal status created by court order following an adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to remain in ~~[his]~~ the minor's home, and supervision and assistance to correct the abuse, neglect, or dependency is provided by the probation department or other agency designated by the court.

~~[(w)]~~ (x) (i) "Residual parental rights and duties" means those rights and duties remaining with the parent after legal custody or guardianship, or both, have been vested in another person or agency, including the responsibility for support, the right to consent to adoption, the right to determine the child's religious affiliation, and the right to reasonable parent-time unless restricted by the court.

(ii) If no guardian has been appointed, "residual parental rights and duties" also include the right to consent to marriage, to enlistment, and to major medical, surgical, or psychiatric treatment.

~~[(x)]~~ (y) "Secure facility" means any facility operated by or under contract with the Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for youth offenders committed to the division for custody and rehabilitation.

~~[(y)]~~ (z) "Shelter" means the temporary care of minors in physically unrestricted facilities pending court disposition or transfer to another jurisdiction.

~~[(z)]~~ (aa) "State supervision" means a disposition which provides a more intensive level of intervention than standard probation but is less intensive or restrictive than a community placement with the Division of Juvenile Justice Services.

~~[(aa)]~~ (bb) "Substantiated" has the same meaning as defined in Section 62A-4a-101.

~~[(bb)]~~ (cc) "Supported" has the same meaning as defined in Section 62A-4a-101.

~~[(cc)]~~ (dd) "Termination of parental rights" means the permanent elimination of all parental rights and duties, including residual parental rights and duties, by court order.

~~[(dd)]~~ (ee) "Therapist" means a person employed by a state division or agency for the purpose of conducting psychological treatment and counseling of a minor in its custody, or any other person licensed or approved by the state for the purpose of conducting psychological treatment and counseling.

~~[(ee)]~~ (ff) "Unsubstantiated" has the same meaning as defined in Section 62A-4a-101.

~~[(ff)]~~ (gg) "Without merit" has the same meaning as defined in Section 62A-4a-101.

(2) As used in Part 3, Abuse, Neglect, and Dependency Proceedings, with regard to the Division of Child and Family Services:

(a) "Custody" means the custody of a minor in the Division of Child and Family Services as of the date of disposition.

(b) "Protective custody" means the shelter of a minor by the Division of Child and Family Services from the time the minor is removed from home until the shelter hearing, or the minor's return home, whichever occurs earlier.

(c) "Temporary custody" means the custody of a minor in the Division of Child and Family Services from the date of the shelter hearing until disposition.

Section 6. Section **78-3a-103.5** is enacted to read:

78-3a-103.5. Parents' and children's rights – Division limits.

In all child abuse, neglect, and dependency proceedings under this chapter, the court shall recognize, as provided in Section 62A-4a-201, the rights of parents and children and the limits placed on the division.

Section 7. Section **78-3a-109** is amended to read:

78-3a-109. Title of petition and other court documents -- Form and contents of petition -- Order for temporary custody -- Physical or psychological examination of minor, parent, or guardian – Dismissal of petition.

(1) The petition and all subsequent court documents in the proceeding shall be entitled:

"State of Utah, in the interest of....., a person under 18 years of age (or a person under 21 years of age)."

(2) The petition shall be verified and statements in the petition may be made upon information and belief.

(3) The petition shall be written in simple and brief language and include the facts which bring the minor within the jurisdiction of the court, as provided in Section 78-3a-104.

(4) The petition shall further state:

(a) the name, age, and residence of the minor;

(b) the names and residences of the minor's parents;

(c) the name and residence of the guardian, if there is one;

(d) the name and address of the nearest known relative, if no parent or guardian is known;
and

(e) the name and residence of the person having physical custody of the minor. If any of the facts required are not known by the petitioner, the petition shall so state.

(5) At any time after a petition is filed, the court may make an order providing for temporary custody of the minor.

(6) The court may order that a minor concerning whom a petition has been filed shall be examined by a physician, surgeon, psychiatrist, or psychologist and may place the minor in a hospital or other facility for examination. After notice and a hearing set for the specific purpose, the court may order a similar examination of a parent or guardian whose ability to care for a minor is at issue, if the court finds from the evidence presented at the hearing that the parent's or guardian's physical, mental, or emotional condition may be a factor in causing the neglect, dependency, or delinquency of the minor.

(7) Pursuant to Rule 506(d)(3), Utah Rules of Evidence, examinations conducted pursuant to Subsection (6) are not privileged communications, but are exempt from the general rule of privilege.

(8) The court may, upon its own motion or a motion from any party to the proceeding, dismiss a petition at any stage of the proceedings.

(9) If the petition is filed under Section 78-3a-305 or 78-3a-405 or if the matter is referred to the court under Subsection 78-3a-105(3)(b):

(a) the court may require the parties to participate in mediation in accordance with Title 78, Chapter 31b, Alternative Dispute Resolution; and

(b) the division [~~of Child and Family Services~~] or a party to the petition may request and the court may order the parties to participate in a family unity conference under the authority of the division [~~of Child and Family Services~~] in accordance with Subsection (10).

(10) (a) A family unity conference may be ordered by the court for any of the following purposes:

- (i) discussing and reviewing the case history;
- (ii) designing a service plan for the child and family, including concurrent planning;
- (iii) discussing a visitation schedule and rules for visitation;
- (iv) identifying possible kinship placements under the requirements of Subsection 78-3a-307(5), and designing services to support the kinship placement;
- (v) conflict resolution between the family and division [~~of Child and Family Services~~] staff;

(vi) discussing child custody issues; or

(vii) crisis clinical intervention to reduce trauma to the child and family.

(b) The family unity conference may be attended by individuals chosen by the family and the division [~~of Child and Family Services~~], and may include extended family members, friends, clergy, service providers, and others who may support the family in keeping the child safe.

(c) A family unity conference may not be held in the following circumstances:

(i) when there is a criminal charge pending in the case;

(ii) to resolve petition disputes; and

(iii) when a family unity conference may pose a threat to the safety of a child or other family member.

(d) With regard to a family unity conference ordered by a court under Subsection (9)(b):

(i) the requirements of Subsection 78-31b-7(3)(b) apply except all parties to the proceeding:

(A) shall be given no less than five days notice of any recommendation made to the court from the family unity conference; and

(B) shall be given an opportunity to be heard by the court; and

(ii) the confidentiality requirements of Section 78-31b-8 apply, except that admissions by a party to the allegations on the petition are admissible at any proceeding.

Section 8. Section **78-3a-112** is amended to read:

78-3a-112. Appearances -- Parents to appear with minor -- Failure to appear -- Contempt -- Warrant of arrest, when authorized -- Parent's employer to grant time off -- Appointment of guardian ad litem.

(1) Any person required to appear who, without reasonable cause, fails to appear may be proceeded against for contempt of court, and the court may cause a bench warrant to issue to produce the person in court.

(2) In all cases when a minor is required to appear in court, the parents, guardian, or other person with legal custody of the minor shall appear with the minor unless excused by the judge.

(a) An employee may request permission to leave the workplace for the purpose of attending court if the employee has been notified by the juvenile court that his minor is required to appear before the court.

(b) An employer must grant permission to leave the workplace with or without pay if the employee has requested permission at least seven days in advance or within 24 hours of the employee receiving notice of the hearing.

(3) If a parent or other person who signed a written promise to appear and bring the minor to court under Section 78-3a-113 or 78-3a-114, fails to appear and bring the minor to court on the date set in the promise, or, if the date was to be set, after notification by the court, a warrant may be issued for the apprehension of that person or the minor, or both.

(4) Willful failure to perform the promise is a misdemeanor if, at the time of the execution of the promise, the promisor is given a copy of the promise which clearly states that failure to appear and have the minor appear as promised is a misdemeanor. The juvenile court shall have jurisdiction to proceed against the promisor in adult proceedings pursuant to Part 8, Adult Offenses.

(5) (a) The court shall endeavor, through use of the warrant of arrest if necessary, as provided in Subsection (6), or by other means, to ensure the presence at all hearings of one or both parents or of the guardian of the minor.

(b) If neither a parent nor guardian is present at the court proceedings, the court may appoint a guardian ad litem to protect the interest of the minor. ~~[A guardian ad litem may also be appointed whenever necessary for the welfare of the minor, whether or not a parent or guardian is present.]~~

(6) A warrant may be issued for the parent, the guardian, the custodian, or the minor if:

- (a) a summons is issued but cannot be served;
- (b) it is made to appear to the court that the person to be served will not obey the summons;
- (c) serving the summons will be ineffectual; or
- (d) the welfare of the minor requires that ~~[he]~~ the minor be brought immediately into the

custody of the court.

Section 9. Section **78-3a-311** is amended to read:

78-3a-311. Dispositional hearing -- Reunification services -- Exceptions.

(1) The court may make any of the dispositions described in Section 78-3a-118, place the child in the custody or guardianship of any individual or public or private entity or agency, order protective supervision, family preservation, medical or mental health treatment, or other services.

(2) (a) (i) Whenever the court orders continued removal at the dispositional hearing, and that the minor remain in the custody of the division [~~of Child and Family Services~~], it shall first establish a primary permanency goal for the minor and determine whether, in view of the primary permanency goal, reunification services are appropriate for the child and the child's family, pursuant to Subsection (3).

(ii) When the court determines that reunification services are appropriate for the child and the child's family, the court shall provide for reasonable parent-time with the parent or parents from whose custody the child was removed, unless parent-time is not in the best interest of the child.

(iii) In cases where obvious sexual abuse, abandonment, or serious physical abuse or neglect are involved, neither the division nor the court has any duty to make "reasonable efforts" or to, in any other way, attempt to provide reunification services, or to attempt to rehabilitate the offending parent or parents. In all cases, the child's health, safety, and welfare shall be the court's paramount concern in determining whether reasonable efforts to reunify should be made.

(b) (i) In addition to the primary permanency goal, the court shall establish a concurrent permanency goal. The concurrent permanency goal shall include a representative list of the conditions under which the primary permanency goal will be abandoned in favor of the concurrent permanency goal and an explanation of the effect of abandoning or modifying the primary permanency goal.

(ii) A permanency hearing shall be conducted in accordance with Subsection 78-3a-312(1)(b) within 30 days if something other than reunification is initially established as a child's primary permanency goal.

(iii) (A) The court may amend a child's primary permanency goal before the establishment of a final permanency plan under Section 78-3a-312. The court is not limited to the terms of the concurrent permanency goal in the event that the primary permanency goal is abandoned.

(B) If, at anytime, the court determines that reunification is no longer a child's primary permanency goal, the court shall conduct a permanency hearing in accordance with Section 78-3a-312 within the earlier of 30 days of the court's determination or 12 months from the original removal of the child.

(c) (i) If the court determines that reunification services are appropriate, it shall order that the division make reasonable efforts to provide services to the child and the child's parent for the purpose of facilitating reunification of the family, for a specified period of time. In providing those services, the child's health, safety, and welfare shall be the division's paramount concern, and the court shall so order.

(ii) The court shall determine whether the services offered or provided by the division under the treatment plan constitute "reasonable efforts" on the part of the division. The court shall also determine and define the responsibilities of the parent under the treatment plan. Those duties and responsibilities shall be identified on the record, for the purpose of assisting in any future determination regarding the provision of reasonable efforts, in accordance with state and federal law.

(iii) (A) The time period for reunification services may not exceed 12 months from the date that the child was initially removed from the child's home.

(B) Nothing in this section may be construed to entitle any parent to an entire 12 months of reunification services.

(iv) If reunification services have been ordered, the court may terminate those services at any time.

(v) If, at any time, continuation of reasonable efforts to reunify a child is determined to be inconsistent with the final permanency plan for the child established pursuant to Subsection 78-3a-312, then measures shall be taken, in a timely manner, to place the child in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent

placement of the child.

(d) Any physical custody of the minor by the parent or a relative during the period described in Subsection (2)(c) does not interrupt the running of the period.

(e) (i) If reunification services have been ordered, a permanency hearing shall be conducted by the court in accordance with Section 78-3a-312 at the expiration of the time period for reunification services. The permanency hearing shall be held no later than 12 months after the original removal of the child.

(ii) If reunification services have not been ordered, a permanency hearing shall be conducted within 30 days, in accordance with Section 78-3a-312.

(f) With regard to a child who is 36 months of age or younger at the time the child is initially removed from the home, the court shall:

(i) hold a permanency hearing eight months after the date of the initial removal, pursuant to Section 78-3a-312; and

(ii) order the discontinuance of those services after eight months from the initial removal of the child from the home if the parent or parents have not made substantial efforts to comply with the treatment plan.

(g) With regard to a child in the custody of the division whose parent or parents have been ordered to receive reunification services but who have abandoned that child for a period of six months since the date that reunification services were ordered, the court shall terminate reunification services, and the division shall petition the court for termination of parental rights.

~~[(3) (a) Because of the state's interest in and responsibility to protect and provide permanency for children who are abused, neglected, or dependent, the Legislature finds that a parent's interest in receiving reunification services is limited. The court may determine that efforts to reunify a child with the child's family are not reasonable or appropriate, based on the individual circumstances, and that reunification services should not be provided. In determining "reasonable efforts" to be made with respect to a child, and in making "reasonable efforts," the child's health, safety, and welfare shall be the paramount concern.]~~

~~[(b)]~~ (3) (a) There is a presumption that reunification services should not be provided to a

parent if the court finds, by clear and convincing evidence, that any of the following circumstances exist:

(i) the whereabouts of the parents are unknown, based upon a verified affidavit indicating that a reasonably diligent search has failed to locate the parent;

(ii) the parent is suffering from a mental illness of such magnitude that it renders ~~[him]~~ the parent incapable of utilizing reunification services; ~~[that finding shall be based on competent evidence from mental health professionals establishing that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within 12 months;]~~

(iii) (A) the minor has been previously adjudicated as an abused child due to physical or sexual abuse~~[-that];~~

(B) following the adjudication the child was removed from the custody of ~~[his]~~ the child's parent~~[-]~~ and was subsequently returned to the custody of that parent~~[-];~~ and

(C) the minor is being removed due to additional physical or sexual abuse;

(iv) the parent has caused the death of another child through abuse or neglect or has committed, aided, abetted, attempted, conspired, or solicited to commit murder or manslaughter of a child or child abuse homicide;

(v) the minor has suffered severe abuse by the parent or by any person known by the parent, if the parent knew or reasonably should have known that the person was abusing the minor;

(vi) (A) the minor has been adjudicated an abused child as a result of severe abuse by the parent~~[-];~~ and

(B) the court finds that it would not benefit the child to pursue reunification services with the offending parent;

(vii) the parent's rights have been terminated with regard to any other child;

(viii) (A) the child has been removed from ~~[his]~~ the child's home on at least two previous occasions; and

(B) reunification services were offered or provided to the family at those times; ~~[or]~~

(ix) the parent has abandoned the child for a period of six months or longer; or

(x) any other circumstance that the court determines should preclude reunification efforts or services.

(b) For purposes of Subsection (3)(a)(ii), the court's finding that a parent is suffering from a mental illness of such magnitude that it renders the parent incapable of utilizing reunification services shall be based on competent evidence from mental health professionals establishing that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within 12 months.

(4) (a) The following shall be considered in determining whether reunification services are appropriate:

~~[(4) (a) Failure]~~ (i) failure of the parent to respond to previous services or comply with any previous treatment plan~~[-];~~;

(ii) the fact that the child was abused while the parent was under the influence of drugs or alcohol~~[-];~~;

(iii) a past history of violent behavior~~[-];~~;

(iv) whether a parent continues to live with an individual who abused the child~~[-];~~;

(v) any patterns of the parent's behavior that have exposed the child to repeated abuse~~[- or]; and~~

(vi) testimony by a competent professional that the parent's behavior is unlikely to be successful~~[-, shall be considered in determining whether reunification services are appropriate].~~

(b) The court shall also consider whether the parent has expressed an interest in reunification with the child, in determining whether reunification services are appropriate.

(5) If reunification services are not ordered pursuant to Subsection (3)(a), and the whereabouts of a parent become known within six months of the out-of-home placement of the minor, the court may order the division to provide reunification services. The time limits described in Subsection (2), however, are not tolled by the parent's absence.

(6) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable services unless it determines that those services would be detrimental to the minor. In determining detriment, the court shall consider the age of the child, the degree of parent-child

bonding, the length of the sentence, the nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if services are not offered and, for minors ten years of age or older, the minor's attitude toward the implementation of family reunification services, and any other appropriate factors.

(b) Reunification services for an incarcerated parent are subject to the 12-month limitation imposed in Subsection (2).

(c) Reunification services for an institutionalized parent are subject to the 12-month limitation imposed in Subsection (2), unless the court determines that continued reunification services would be in the child's best interest.

(7) If, pursuant to Subsection [~~(3)(b)(ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), or (x)~~] (3)(a), the court does not order reunification services, a permanency hearing shall be conducted within 30 days, in accordance with Section 78-3a-312.

Section 10. Section **78-3a-912** is amended to read:

78-3a-912. Appointment of attorney guardian ad litem -- Duties and responsibilities -- Training -- Trained staff and court-appointed special advocate volunteers -- Costs -- Immunity.

(1) The court may appoint an attorney guardian ad litem to represent the best interest of a minor involved in any case before the court and shall consider only the best interest of a minor in determining whether to appoint a guardian ad litem.

(2) ~~[(a)]~~ (a) The court shall appoint an attorney guardian ad litem ~~[shall]~~ to represent the best interest of each minor who ~~[may become]~~ is the subject of a petition alleging abuse, neglect, or dependency, from the date the minor is removed from the minor's home by the division ~~[of Child and Family Services]~~, or the date the petition is filed, whichever occurs earlier.

(b) The appointment of an attorney guardian ad litem under Subsection (2)(a) shall be made in a hearing where the parents of the minor:

(i) have been given notice to be present; and

(ii) have the opportunity to express their preferences and any concerns they may have relating to the appointment of an attorney guardian ad litem.

(3) ~~[The]~~ If the court appoints an attorney guardian ad litem employed by or under contract with the Office of the Guardian Ad Litem, the Office of the Guardian Ad Litem Director, through ~~[an]~~ the attorney guardian ad litem, shall:

- (a) represent the best interest of the minor in all proceedings;
- (b) be trained in applicable statutory, regulatory, and case law, and in accordance with the United States Department of Justice National Court Appointed Special Advocate Association guidelines, prior to representing any minor before the court;
- (c) conduct or supervise an independent investigation in order to obtain first-hand, a clear understanding of the situation and needs of the child;
- (d) personally meet with the minor, personally interview the minor if the minor is old enough to communicate, determine the minor's goals and concerns regarding placement, and personally assess or supervise an assessment of the appropriateness and safety of the minor's environment in each placement;
- (e) file written motions, responses, or objections at all stages of a proceeding when necessary to protect the best interest of a minor;
- (f) personally or through a trained volunteer, paralegal, or other trained staff, attend all administrative and foster care citizen review board hearings pertaining to the minor's case;
- (g) participate in all appeals unless excused by order of the court;
- (h) be familiar with local experts who can provide consultation and testimony regarding the reasonableness and appropriateness of efforts made by the division ~~[of Child and Family Services]~~ to maintain a minor in the minor's home or to reunify a minor with the minor's parent;
- (i) to the extent possible, and unless it would be detrimental to the minor, personally or through a trained volunteer, paralegal, or other trained staff, keep the minor advised of the status of the minor's case, all court and administrative proceedings, discussions, and proposals made by other parties, court action, and psychiatric, medical, or other treatment or diagnostic services that are to be provided to the minor;
- (j) review proposed orders for, and as requested by the court, prepare proposed orders with clear and specific directions regarding services, treatment, and evaluation, assessment, and

protection of the minor and the minor's family; ~~and~~

(k) personally or through a trained volunteer, paralegal, or other trained staff, monitor implementation of a minor's treatment plan and any dispositional orders:

(i) to determine whether services ordered by the court;

(A) are actually provided[;]; and

(B) are provided in a timely manner[;]; and

(ii) attempt to assess whether they are accomplishing their intended goal[;]; and

(l) unless otherwise directed by the court, communicate with the parents or guardian of the minor and give consideration to their concerns and goals for the minor.

(4) If the court appoints an attorney guardian ad litem who is not employed by or under contract with the Office of the Guardian Ad Litem, the attorney guardian ad litem shall comply with the requirements of Subsection (3).

(5) An attorney guardian ad litem appointed under Subsection (2) may not be the attorney responsible for presenting the evidence alleging child abuse, neglect, or dependency.

(6) Upon appointment of an attorney guardian ad litem under Subsection (2), the court shall advise the attorney guardian ad litem of his duty:

(a) to represent the best interest of the minor in all proceedings; and

(b) to fulfill the duties set forth in Subsection (3).

~~[(4)]~~ (7) (a) An attorney guardian ad litem may use trained volunteers, in accordance with Title 67, Chapter 20, Volunteer Government Workers Act, trained paralegals, and other trained staff to assist in investigation and preparation of information regarding the cases of individual minors before the court. An attorney guardian ad litem may not, however, delegate the attorney's responsibilities described in Subsection (3).

(b) All volunteers, paralegals, and staff utilized pursuant to this section shall be trained in and follow, at a minimum, the guidelines established by the United States Department of Justice Court Appointed Special Advocate Association.

(c) The court may use volunteers trained in accordance with the requirements of Subsection ~~[(4)]~~ (7)(b) to assist in investigation and preparation of information regarding the

cases of individual minors within the jurisdiction.

(d) When possible and appropriate, the court may use a volunteer who is a peer of the minor appearing before the court, in order to provide assistance to that minor, under the supervision of an attorney guardian ad litem or the attorney's trained volunteer, paralegal, or other trained staff.

~~[(5)]~~ (8) The attorney guardian ad litem shall continue to represent the best interest of the minor until released from duties by the court.

~~[(6)]~~ (9) (a) The juvenile court is responsible for all costs resulting from the appointment of an attorney guardian ad litem and the costs of volunteer, paralegal, and other staff appointment and training, and shall use funds appropriated by the Legislature for the guardian ad litem program to cover those costs.

(b) (i) When the court appoints an attorney guardian ad litem under this section, the court may assess all or part of the attorney's fees, court costs, and paralegal, staff, and volunteer expenses against the minor's parents, parent, or legal guardian in a proportion that the court determines to be just and appropriate.

(ii) The court may not assess those fees or costs against a legal guardian, when that guardian is the state, or against a parent who is found to be impecunious. If a person claims to be impecunious, the court shall require of that person an affidavit of impecuniosity as provided in Section 78-7-36 and the court shall follow the procedures and make the determinations as provided in Section 78-7-36.

~~[(7)]~~ (10) An attorney guardian ad litem appointed under this section, when serving in the scope of ~~[his]~~ the attorney guardian ad litem's duties as guardian ad litem is considered an employee of the state for purposes of indemnification under Title 63, Chapter 30, Utah Governmental Immunity Act.

~~[(8)]~~ (11) (a) An attorney guardian ad litem shall represent the best interest of a minor.

(b) If the minor's wishes differ from the attorney's determination of the minor's best interest, the attorney guardian ad litem shall communicate the minor's wishes to the court in addition to presenting the attorney's determination of the minor's best interest. A difference

between the minor's wishes and the attorney's determination of best interest may not be considered a conflict of interest for the attorney.

~~[(b)]~~ (c) The court may appoint one attorney guardian ad litem to represent the best interests of more than one minor child of a marriage.

~~[(9)]~~ (12) An attorney guardian ad litem shall be provided access to all division ~~[of Child and Family Services]~~ records regarding the minor at issue and the minor's family.

~~[(10)]~~ (13) An attorney guardian ad litem shall maintain current and accurate records regarding the number of times the attorney has had contact with each minor and the actions the attorney has taken in representation of the minor's best interest.

~~[(11)]~~ (14) (a) Except as provided in Subsection ~~[(11)]~~ (14)(b), all records of an attorney guardian ad litem are confidential and may not be released or made public upon subpoena, search warrant, discovery proceedings, by authorization or order of a court, or otherwise. This Subsection (14)(a) supersedes Title 63, Chapter 2, Government Records Access and Management Act.

(b) All records of an attorney guardian ad litem are subject to legislative subpoena, under Title 36, Chapter 14, Legislative Subpoena Powers, and shall be released to the Legislature.

(c) Records released in accordance with Subsection ~~[(11)]~~ (14)(b) shall be maintained as confidential by the Legislature. The Office of the Legislative Auditor General may, however, include summary data and nonidentifying information in its audits and reports to the Legislature.

(d) Because of the unique role of an attorney guardian ad litem described in Subsection ~~[(8)]~~ (11), and the state's role and responsibility to provide a guardian ad litem program and, as parens patriae, to protect minors, Subsection ~~[(11)]~~ (14)(b) constitutes an exception to Rules of Professional Conduct, Rule 1.6, as provided by Rule 1.6(b)(4). A claim of attorney-client privilege does not bar access to the records of an attorney guardian ad litem by the Legislature, through legislative subpoena. This is the only exception to the Rules of Professional Conduct for an attorney guardian ad litem.

(15) An attorney guardian ad litem may not make public statements, or grant interviews that will be disclosed publicly outside of the juvenile court, about a child abuse, neglect, or

dependency case, even if the statement or interview does not involve the disclosure of a record that is private, controlled, or protected under Title 63, Chapter 2, Government Records Access and Management Act.

Section 11. Section **78-7-45** is amended to read:

78-7-45. Private attorney guardian ad litem -- Appointment -- Costs and fees -- Duties -- Conflicts of interest -- Pro bono obligation -- Indemnification -- Minimum qualifications.

(1) (a) The court may appoint a private attorney as guardian ad litem to represent the best interests of the minor in any district court action in which the custody of or visitation with a minor is at issue. The attorney guardian ad litem shall be certified by the Director of the Office of the Guardian Ad Litem as having met the minimum qualifications for appointment, but shall not be employed by or under contract with the Office of the Guardian Ad Litem.

(b) If an attorney guardian ad litem has been appointed for the minor in any prior or concurrent action and that attorney guardian ad litem is available, the court shall appoint that attorney guardian ad litem, unless good cause is shown why another attorney guardian ad litem should be appointed.

(c) If, after appointment of the attorney guardian ad litem, an allegation of abuse, neglect, or dependency of the minor is made the court shall:

(i) determine whether it is in the best interests of the minor to continue the appointment;
or

(ii) order the withdrawal of the private attorney guardian ad litem and [appoint], in the manner set forth in Subsection 78-3a-912(2), appoint either:

(A) the Office of the Guardian Ad Litem[:]; or

(B) another private attorney guardian ad litem.

(2) (a) The court shall assess all or part of the attorney guardian ad litem fees, courts costs, and paralegal, staff, and volunteer expenses against the parties in a proportion the court determines to be just.

(b) If the court finds a party to be impecunious, under the provisions of Section 78-7-36,

the court may direct the impecunious party's share of the assessment to be covered by the attorney guardian ad litem pro bono obligation established in Subsection (6)(b).

(3) The attorney guardian ad litem appointed under the provisions of this section shall:

(a) represent the best interests of the minor from the date of the appointment until released by the court;

(b) conduct or supervise an independent investigation in order to obtain a clear understanding of the situation and needs of the minor;

(c) interview witnesses and review relevant records pertaining to the minor and the minor's family, including medical, psychological, and school records;

(d) if the minor is old enough to communicate and unless it would be detrimental to the minor:

(i) meet with and interview the minor;

(ii) determine the minor's goals and concerns regarding custody or visitation; and

(iii) counsel the minor regarding the nature, purpose, status, and implications of the case, of hearings, of recommendations, and proposals by parties and of court orders;

(e) conduct discovery, file pleadings and other papers, prepare and review orders, and otherwise comply with the Utah Rules of Civil Procedure as necessary to protect the best interest of the minor;

(f) unless excused by the court, prepare for and attend all mediation hearings and all court conferences and hearings, and present witnesses and exhibits as necessary to protect the best interests of the minor;

(g) identify community resources to protect the best interests of the minor and advocate for those resources; and

(h) participate in all appeals unless excused by the court.

(4) (a) The attorney guardian ad litem shall represent the best interests of a minor. If the minor's wishes differ from the attorney's determination of the minor's best interests, the attorney guardian ad litem shall communicate to the court the minor's wishes and the attorney's determination of the minor's best interests. A difference between the minor's wishes and the

attorney's determination of best interests is not sufficient to create a conflict of interest.

(b) The court may appoint one attorney guardian ad litem to represent the best interests of more than one minor child of a marriage.

(5) An attorney guardian ad litem appointed under this section is immune from any civil liability that might result by reason of acts performed within the scope of duties of the attorney guardian ad litem.

(6) (a) Upon the advice of the Director of the Office of the Guardian Ad Litem, the Judicial Council shall by rule establish the minimum qualifications and requirements for appointment by the court as an attorney guardian ad litem.

(b) An attorney guardian ad litem may be required to appear pro bono in one case for every five cases in which the attorney is appointed with compensation.

(7) This section shall be effective in the Second, Third, and Fourth Judicial Districts on July 1, 2001, and in the remaining judicial districts of the state on July 1, 2002.

Section 12. Repealer.

This bill repeals:

Section 78-3a-305.1, Presumption of responsibility.

Section 13. Effective date.

This bill takes effect on July 1, 2004.